IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.6137 OF 2005

Smt.Smita Shripad Rabase and others).. Petitioners

Versus

Smt.Suyogi Mohan Naik).. Respondent

Mr.G.R. Nadkarni for the Petitioners.

Mr.K.A. Shah for the Respondent.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 10TH OCTOBER 2005

P.C.:

. This Petition challenges the order of the Appellate Court whereby the Appellate Court has held that the trial Court's judgment is incorrect and the Petitioner is not a gratuitous licensee. The Appellate Court has found that the pleadings on record, both in the Plaint and the Written Statement, indicate that the Petitioner was not a gratuitous licensee and was in fact paying compensation to the Respondent. Therefore, the Appellate Court after considering the evidence on record has arrived at this conclusion. I see no reason to disturb this finding. Reliance is placed by the learned Advocate for the Petitioners on the judgment of *Ramesh Dwarkadas Mehra* vs. *Indravati Dwarkadas Mehra*, **2001 (4) Mh.L.J. 483**, to submit that the Small Causes Court had

no jurisdiction to entertain a Suit against a gratuitous licensee. In my opinion, this judgment has no application since the Appellate Court on facts has found that the Petitioner is not gratuitous licensee.

2. It is then contended that the Suit was originally filed by one Gangaram Warang who was the Chairman of the Society. This person having died during the pendency of the Suit, the Respondent was brought on record as Chairman of the Society. It is in evidence that Pilaji Sakpal who is the new Chairman was appointed after the death of Warang. The Chairman of the Society was authorised to take steps as directed by the Society. The Appellate Court has rightly held that there is no need for a fresh resolution to be passed authorising the new Chairman since the authorisation is to the post of the Chairman and not to individual. Reliance placed on the judgments in *Ramadhin Singy* vs. *Siaram Singh and another*, **AIR 1957 PATNA 64**, *Kiran Singh and others* vs. *Chaman Paswan and others*, **AIR 1957 SC 540**, *Central Bank of India* vs. *Smt.Shashi Kala Sharma and others*, **1989 (1) Current Civil Cases 367**, *Arjun Dada Gadage* vs. *Mallappa Gurappa Chougule and another*, **2004 (1) Bom.C.R. 741**, *Raj Kumar Dhar and others* vs. *Colonel A.Stuart Lewis*, **AIR 1958 CALCUTTA 104** and *Madhavdas Dwarkadas* vs. *Jugal Kishore Saraf*, **AIR 1983 BOMBAY 20**, is of no avail. In my view, the Appellate Court has committed no error. Hence,

Petition rejected.